THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.18334 of 2006

29.09.2006

Between
Vijayawada Lorry Owners Association.

…Petitioner

And
Municipal Corporation of Vijayawada, rep. by its Commissioner, Vijayawada and another.

…Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.18334 of 2006

ORDER:

Heard the learned counsel.

Vijayawada Lorry Owners Association-writ petitioner filed the writ petition for a writ of Mandamus declaring the action of the respondents in preventing usage of lorry stand at Bhavanipuram by the members of the petitioner-Association by issuing proceedings, dated 23.08.2006, as unconstitutional and consequently direct the authorities not to interfere with the activities of the members of the petitioner-Association from using the parking space at the existing lorry stand at Bhavanipuram and pass such other suitable orders.

This Court issued Rule nisi on 01.09.2006 and in W.P.M.P.No.23037 of 2006 on the same day, granted interim suspension until further orders. The Vijayawada

Municpal Corporation, the first respondent herein, (hereinafter referred to as Corporation) filed W.V.M.P.No.1824 of 2006 to vacate the said interim order.

At the request of the learned counsel on record, the writ petition is being disposed of finally.

Heard Sri K.S.Murthy, the learned counsel representing the petitioner, Smt.G.Jyothi Kiran, the learned Standing Counsel representing the first respondent and Ms.Aruna, the learned Standing Counsel appearing for the second respondent.

It is stated that Vijayawada is known for its trading activity, wholesale business and lorry transportation business providing large scale employment opportunities, especially small and marginal traders and new entrepreneurs. There are nearly 150 members of the petitioner-Association, who mostly run the local lorries and the said lorries are used to transport goods from the Railway Yard in the one town and transport the same within the city. As these vehicles were being parked at various places, the respondent-authorities have developed a parking space for these local lorries at Bhavanipuram nearly 25 years back and the lorries are to be parked there. It is also stated that since 1986-87 the Corporation has been getting money by way of auctioning the rights to collect the parking fee from the owners of the lorries, which are parked in the lorry stand at

Bhavanipuram. Initially contractors used to bid for the lease and then, deposit the money with the Corporation. The Corporation authorities indicated that the outside contractors are not able to maintain the parking slot and indicated that the lorry owners themselves may maintain the lorry stand at Bhavanipuram, pursuant to which, the members of the petitioner-Association participated in the auction and were declared as highest bidders and then, they were given the lorry stand for lease. This lease was being extended from time to time by enhancing 10% every year, as per the Rules and the latest lease was extended in January, 2006.

It is further stated that the Assistant Commissioner of respondent No.1 issued proceedings on 10.04.2006 asking the members of the petitioner-Association to pay Rs.1,07.800/-, and Rs.3,235/- for proforma agreement; and Rs.6,000/- for the last year proforma agreement and the same was paid on 12.04.2006. It is also stated that for the last fortnight, the Officers of the second respondent have been insisting the members of the petitioner-Association to make arrangements to shift the lorry parking slot, which is 25 km away from Vijayawada. They instructed the members of the petitioner-Association to park the lorries there and come to Vijayawada Railway Station every day and go back to parking slot, which is 25 km away. Several other factual details have also been

narrated.

It is also further stated that to the shock of the petitioner and dismay, on 23.08.2006 proceedings were issued by the Corporation asking the members of the petitioner-Association to vacate the lorry stand and the same received by the petitioner-Association on 25.08.2006 in the evening. However, no reasons were mentioned in the order. After lot of efforts, the petitioner-Association could meet the authorities on 30.08.2006 and made a representation. Several difficulties, which would be faced by the members of the petitioner-Association, also had been narrated in detail.

In the vacate application filed by the respondents, several of the allegations were denied. It was pleaded in para-4 that it is not true that the respondent authorities are asking the petitioner-Association to vacate the leased premises without giving any time, though the lease is still subsisting. In this regard, it is submitted that the lease period was extended from time to time, since 03.12.1990 to 31.07.2003. The Steering Committee of the petitioner-Association in its representation, dated 19.07.2003, has stated that the lease period of Bhavanipuram Lorry Stand is expiring by 31.07.2003, but the works at Ibrahimpatnam Truck Terminal are not completed and it will take four months time and hence, requested to extend the lease

period for another six months i.e., from 01.08.2003 to 31.01.2004. The petitioner-Association submitted representations from time to time stating that the works at Truck Terminal were not completed in all aspects i.e., Electricity, Water supply etc., and requested the Corporation to extend the lease period with an assurance that the premises will be vacated as and when the Truck Terminal is ready to occupy or whenever the Corporation asks to vacate the premises. On that condition, the Corporation has extended the lease period from time to time i.e., upto 30.09.2006 and even the petitioner-Association also submitted an agreement to that effect.

It is also submitted that the lease period, which was given to the petitioner-Association, is upto 02.12.1996 and before completion of the said lease period, the petitioner-Association through its representation, dated 11.09.1996, requested the Corporation to renew the lease period for a further period of three years by enhancing the lease amount by 33 1/3% and assured that it will cooperate with the Corporation authorities always. Sri L.Nageswara Rao R/o, Vijayawada in his representation, dated 02.11.1996, has offered a sum of Rs.1,40,000/- as lease amount per year and the said proposal was placed before the Standing Committee, and the Standing Committee in its resolution No.542, dated 15.11.1996, has resolved to place before it all the applications offering highest lease

amounts for leasing the lorry stand. On 18.11.1996 negotiations were conducted with the Presidents of Inter Trips Lorry Owners Union and the petitioner-Association. Both the Associations agreed to pay Rs.1,40,000/- per year as lease amount and requested not to lease out the premises to others. Sri L.Nageswara Rao of Vijayawada offered a sum of Rs.1,75,000/-, instead of Rs.1,40,000/-, as lease amount. When the same was placed before the Standing Committee, it resolved in its resolution No.575, dated 22.11.1996, to conduct open auction. Then the two Associations have filed O.S.No.634 of 1996 on the file of the Court of the I Additional Civil Judge, Vijayawada and in I.A.No.781 of 1996 obtained injunction orders restraining the Corporation in dealing or interfering in any manner with peaceful possession and enjoyment of the Associations in respect of plaint schedule property, pending disposal of the suit. The said suit was dismissed by a judgment and decree, dated 31.01.2002. Against the said judgment and decree, the Associations filed A.S.No.5 of 2002 on the file of the Court of the II Additional District Judge, Vijayawada and the same was also dismissed with costs by a judgment and decree, dated 05.12.2002, by granting time till 30.12.2002 to vacate the plaint schedule property and also to remove the superstructure and in the event of failure, the same shall be done through due process of law. Further, liberty was given to the

Corporation to recover the expenses, if any, incurred for the removal of the structures in the premises. Pursuant to the judgment and decree in A.S.No.5 of 2002, possession of the lorry stand was taken by the Corporation on 31.12.2002.

The relevant paras (7, 8, 9, 11 and 12) of the counter affidavit read as under-

> "It is submitted that the President of Vijayawada Inter Trip Lorry Owners Union submitted representation to the Hon'ble Agricultural Minister stating that the two unions are in possession of the Lorry stand since 20 years and nearly 500 lorries are parked at the lorry stand and it was given for lease of Rs.71,000/- per year and on enhancement of 33% for every 3 years. In the year 1996, the respondent Corporation authorities have informed them to vacate the lorry stand and trying to conduct open auction. The then Hon'ble Chief Minister Sri Nara Chandra babu Naidu have proposed to construct Truck Terminal at Ibrahimpatnam. They have agreed to shift to Truck Terminal and also paid some amount to 2nd respondent for construction of office building and requested to continue them in Bhavanipuram Lorry stand upto the completion of Truck Terminal. The same representation was forwarded by the then Hon'ble Minister on 05.12.2002 to the respondent Corporation with an endorsement saying "Please examine and take undertaking on stamped paper from

the Association that they will shift to Ibrahimpatnam truck terminal where the work is under progress. Upto that time they may be permitted". After taking over the possession of the Bhavanipuram Lorry Stand a proposal was placed before the Standing Committee to conduct open auction to collect the parking fees at Bhavanipuram Lorry Stand in the meanwhile the parking fees should be collected by the Department staff. The Standing Committee in their Resolution No.1022, Dt. 20.01.2003, has resolved that the Lorry Stand at Bhavanipuram has to be shifted to the Truck Terminal at Ibrahimpatnam which is constructed by the State Government in near future, hence instead of collection of parking fees by the departmental staff, the lease period may be extended for a period of six months upto 31.07.2003 on enhancement by 33 1/3% on the lease amount of Rs.1,40,000/- per year as agreed previously by the petitioners Association. As per the Standing Committee Resolution, proceedings were issued to the petitioner-Association for leasing the Bhavanipuram Lorry Stand for a period of six months i.e., from 03.02.2003 to 31.07.203 at Rs.93,310/- as lease amount.

Para-8 - it is submitted that the Steering Committee of the petitioner-Association in their presentation dated 19.07.2003 has stated that the lease period of Bhavanipuram Lorry Stand is expiring by 31.07.2003, but the works at Ibrahimpatnam Truck

Terminal are not completed and it will take four months time and requested to extend the lease period for another six months. Accordingly, the lease period was extended for another six months i.e., from 01.08.2003 to 31.01.2004 on enhancement of 5% on the existing lease amount i.e., Rs.98,000/- with the same conditions. The Steering Committee of the petitioner-Association in their representation dated 19.01.2004 has stated that the lease period is being completed by 31.01.2004 and as the works like lighting, telephone, water facilities are not provided at Truck Terminal requested to extend the lease period upto completion of Truck Terminal. On the representation of the petitioner-Association, a letter, dated 22.01.2004, was addressed to the second respondent to clarify whether the construction is completed or not and if it is not completed the probable date of completion of Truck Terminal in all aspects may please be intimated so as to take a decision on the Associations representation in view of the ensuing Krishna Pushkarams. As per the representations from the Vijayawada Inter Trip Lorry Owners Union from time to time, the lease period of Lorry stand was extended upto 31.01.2005. The second respondent in their letter Rc.No.A3-132/05, dated 28.02.2005 has informed that the Truck Terminal at Ibrahimpatnam was inaugurated by the Hon'ble Chief Minister on 20.11.2004 and all the truck operators were informed through a notification issued

by the Commissioner of Police, Vijayawada City that the entry of trucks in the city will not be permitted and requested the respondent Corporation not to renew the further lease period for the Bhavanipuram Lorry Stand. The Secretary of the petitioner Association and the Vijayawada Inter Trip Lorry Owners Association has requested in their letter dated: 27.01.2005 and 09.02.2005 to extend the lease period of the Lorry Stand up to the completion of the works at Truck Terminal and requested to extend the lease period from 01.02.2005 and assured that the premises will be vacated as and when required by the Vijayawada Municipal Corporation.

Para-9 - It is true that this respondent issued an endorsement on 10.04.2006 to pay the lease amount of Rs.1,07,800/- and submit the Agreement. The petitioner has paid the said lease amount and submitted Agreement on 04.05.2006. As per condition No.11 of the agreement, the Petitioner Association agreed to vacate the premises whenever truck terminal at Ibrahimpatnam is ready for occupation or whenever required to Vijayawada Municipal Corporation and delivering the vacant possession of it in good condition.

Para-11 - It is true that the petitioner Association has submitted a representation to the Respondent Corporation requesting to extend the lease period further till the alternative accommodation is provided. An endorsement Rc.A1-10420/02

dt.22.09.06 has been issued to the petitioner Association rejecting the request for further extension of lease period in view of the notification issued by the Commissioner of Police under Section 31 of the Police Act (Control Act of 1961) Rule-21 and 57 of A.P. Traffic Rules, 1962 regarding the entry of goods vehicles, lorries for loading and un-loading in Vijayawada City are prohibited. The 2nd respondent in their letter Rc.A3-132/05, Dated: 22.08.06 stated that the Truck Terminal at Ibrahimpatnam was completed in all aspects and requested this respondent Corporation not to renew lease period of the Bhavanipuram Lorry Stand. In this connection it is to state that the Petitioner Association is well aware to vacate the said premises at any time as the Vijayawada Municipal Corporation has extended the lease period of the Lorry stand from time to time on the requests of the said association on a condition that they have to vacate as and when truck terminal is ready or whenever the Vijayawada Municipal Corporation asks to vacate.

Para-12 - It is submitted that the Petitioner Association is well aware to vacate the lorry stand at any time as the truck terminal was constructed with Rs.2.00 Crores and they also mentioned in their representations that they have paid some money to the 2nd respondent for allotment of accommodation of their offices. The 2nd respondent requested all the

truck operators through the President and Secretaries of the Associations in the meetings held on 24.02.2005, 14.06.2005, 14.11.2005 and 28.07.2006 to shift their offices to truck terminal at Ibrahimpatnam and run the business therein and to cooperate to become operational of truck terminal and also informed that the Commissioner of Police has also issued notification stating that the entry of trucks in the city will not be permitted. In the circumstances, the 2nd respondent requested this respondent not to renew further lease period for the Bhavanipuram Lorry stand in the interest of reducing the traffic congestion, atmospheric pollution like dust pollution, sound pollution etc., in the Vijayawada City. For the above reasons this Respondent Corporation have issued notice to the President, the Vijayawada Lorry Owners Association, Bhavanipuram to vacate the Lorry stand immediately and to hand over the same to the Respondent Corporation."

In such circumstances, the first respondent-Corporation prayed for vacation of the interim order. Specific stand was taken that the extended time is also coming to an end by tomorrow. On the aspect of the representation, the endorsement, dated 22.09.2006, is placed before this Court.

Several factual details had been narrated and considered, and ultimately, the request made by the applicant-Vijayawada Lorry Owners Association,

represented by the President, had been rejected and they are directed to vacate the premises on 30.09.2006 itself, without any further delay. At this stage, a request is made by

Sri K.S.Murthy, learned counsel representing the petitioner-Association, that some reasonable time may be given for vacating the premises in question.

In view of the facts and circumstances and also taking into consideration the hardship, the petitioner-Association is given two weeks time to vacate the premises without causing any further delay whatsoever, especially in the light of the hardship pleaded by the first respondent-Corporation. Except making this direction, no other relief can be granted in other aspects.

Subject to the observation made giving time of two weeks, the writ petition is dismissed. No order as to costs.

29.09.2006

Note: 1.Send the operative portion by wire at party's costs.
2.Issue CC by tomorrow.

(b/o)

VGB